

**Application No.: 10/786,576**  
**Filing Date: February 24, 2004**

## **REMARKS**

In the Office Action, Claims 1-6 and 9-48 were rejected. By this paper, Claim 22 has been amended. Claims 1-48 remain pending and are presented for further examination.

### **I. Allowable Subject Matter**

Claims 7 and 8 were indicated as being allowable if rewritten in independent form. However, as set forth below, Applicant submits that Claims 7 and 8 already depend from allowable Claim 1.

### **II. Rejection of Claims 1-6, 9, 11-13, 15, 19, 21, 24-25, and 33-34 under 35 U.S.C. § 102(e)**

The Examiner rejected Claims 1-6, 9, 11-13, 15, 19, 21, 24-25, and 33-34 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Publication No. 2005/0047616 to Lee.

Applicant respectfully disagrees. Applicant is submitting with this response Declarations by Bill McCarty and John Rickenbrode, under 37 C.F.R. § 1.131, that Applicant believes removes the Lee reference from consideration. Applicant has also included Exhibits A-G to the McCarty Declaration, and Exhibits A and B to the Rickenbrode Declaration to corroborate the declarations showing conception prior to September 3, 2003 and diligent reduction to practice therefrom. Accordingly, Applicant has not presented further<sup>4</sup> arguments in support of the patentability of these claims.

Applicant notes that Lee was filed on September 3, 2003. The critical date to remove the Lee Application from consideration is thus September 3, 2003.

The *Declarations* includes facts showing a completion of the invention in this country before the filing date of the Lee application (37 C.F.R. § 1.131(a)(1) and M.P.E.P § 715). The showing of facts are such, in character and weight, as to establish conception of the invention prior to the effective date of the referenced coupled with due diligence from a date prior to the effective date of the reference to a subsequent filing of the application (37 C.F.R. § 1.131(b) and M.P.E.P § 715).

The features of the invention as recited in independent Claims 1, 24, 26, 33, and 35 were conceived at least prior to September 3 in this country. The *Declaration* by William McCarty shows that drawings describing the invention were prepared prior to September 3, 2003. *McCarty Declaration*, 5(a) and Appendix A. In addition, customer and manufacturer quotes

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referencing claimed features were also prepared prior to September 3, 2003. *McCarty Declaration*, para. 5(a)-(d). These facts establish conception of the claimed invention prior to the critical date and establish that the inventors had conceived of the invention prior to September 3, 2003. Additionally, reasonable due diligence in reducing the invention to constructive reduction to practice was present from at least prior to September 3, 2003 to at least February 24, 2004, the filing date of the present patent application. *McCarty Declaration*, para. 5(e)-(g).

In addition, the diligence of the attorney in preparing and filing the patent application inures to the benefit of the inventor. See *Bey v. Kollonitsch*, 866 F.2d 1024, 231 USPQ 967 (Fed. Cir. 1986) (Reasonable diligence is all that is required of the attorney. Reasonable diligence is established if the attorney worked reasonably hard on the application during the continuous critical period. It is not necessary that the attorney should drop all other work and concentrate on the particular invention involved. If the attorney has a reasonable backlog of unrelated cases which he takes up in chronological order and carries out expeditiously, that is sufficient.). The requisite diligence with respect to progress on the application was present from November 17, 2003 to February 24, 2004. *Rickenbrode Declaration*, para. 4-8. In particular, the invention was diligently reduced to practice from November 17, 2003 until the filing of the present application on February 24, 2004 during which time the present application was diligently prepared and filed in the normal course of managing my workload. *Id.*

Accordingly, Applicant respectfully submits that Lee is not available as a prior art reference under 35 U.S.C. § 102(e). Hence, Applicant respectfully submits that Claims 1-6, 9, 11-13, 15, 19, 21, 24-25, and 33-34 are patentable over the applied references.

### **III. Rejection of Claims 10, 16-18, 20, 26-31, and 35-48 under 35 U.S.C. § 103(a)**

The Examiner rejected Claims 10, 16-18, 20, 26-31, and 35-48 under 35 U.S.C. § 103(a) in view of Lee and in further view of Official Notice. As discussed above, Applicant submits that Lee is unavailable as a reference under § 102(e) and thus unavailable under § 103(a). Thus, Applicant submits that Claims 10, 16-18, 20, 26-31, and 35-48 are patentable in view of the applied references for at least that reason. Further, the extent that the Examiner relies on official notice of any facts, Applicant respectfully traverses such notice and requests that the Examiner provide documentary support for these assertions.

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**IV. Rejection of Claims 14 and 32 under 35 U.S.C. § 103(a)**

In paragraph 6 of the Office Action, the Examiner rejected Claims 14 and 32 under 35 U.S.C. § 103(a) in view of Lee in further view of U.S. Patent No. 6,151,401 to Annaratone. As each of Claims 14 and 32 depends from one of Claims 1 and 26, Applicant submits that those claims are allowable for at least the reasons discussed above with reference to Claims 1 and 26.

**V. Rejection of Claims 22-23 under 35 U.S.C. § 102(e)**

The Examiner rejected Claims 22-23 under U.S.C. § 102(e) in view of U.S. Patent Publication No. 2003/012679 to Dudleyton, et al. In order to expedite prosecution, Application has amended previously independent Claim 22 to depend from Claim 24. As discussed above, Claim 24 is patentable in view of the applied references. Thus, Claims 22-23 are also patentable over the applied references for at least the same reasons. Applicant notes that the numbering of Claims 22-24 is now out of sequence given their dependency to Claim 24 and requests the Examiner renumber the claims appropriately upon allowance.

**VI. No Disclaimers or Disavowals**

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the applied references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

**VII. Conclusion**

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

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Any remarks in support of patentability of one claim should not be imputed to any other claim, even if similar terminology is used. Additionally, any remarks referring to only a portion of a claim should not be understood to base patentability on solely that portion; rather, patentability must rest on each claim taken as a whole. Applicant respectfully traverses each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art discloses or teaches, even if not expressly discussed herein. Although changes to the claims have been made, no acquiescence or estoppel is or should be implied thereby; such amendments are made only to expedite prosecution of the present application and are without prejudice to the presentation or assertion, in the future, of claims relating to the same or similar subject matter.

Any claim amendments which are not specifically discussed in the above remarks are not made for patentability purposes, and it is believed that the claims would satisfy the statutory requirements for patentability without the entry of such amendments. Rather, these amendments have only been made to increase claim readability, to improve grammar, and to reduce the time and effort required of those in the art to clearly understand the scope of the claim language.

Applicant has not presented all arguments concerning whether the applied references can be properly combined in view of the clearly missing elements noted above, and Applicant reserves the right to later contest whether a proper reason exists to combine these references and to submit evidence relating to secondary considerations supporting the non-obviousness of the securement devices recited by the pending claims.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicants' attorney in order to resolve such issue promptly.

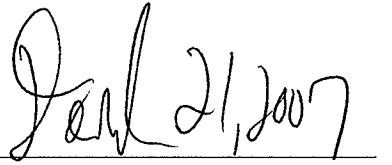
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Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated:



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